IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

WP(C).No. 5237 of 2004(W)

AGAINST THE ORDER OA.2067/2003 IN
OS.1799/2001 of II ADDL.M.C.,TRIVANDRUM
.....

PETITIONER:

SARASWATHY AMMA,
CHERAYILKARA VEEDU, POTHECODE,
THIRUVANANTHAPURAM, FROM
MALAYIKONATHU VEEDU, AYROOPPARA,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.A.AHAMMED
SRI.M.SREEKUMAR

RESPONDENTS:
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1. SOMAN NAIR, S/O.KRISHNA PILLAI,
L.S.BHAVAN, MALAYIKONATHU VEEDU,
POTHENCODE, AYIROOPPARA VILLAGE,
THIRUVANANTHAPURAM.

2. LEELA AMMA, W/O.SOMAN NAIR,
L.S.BHAVAN, MALYILKONATHU VEEDU,
POTHENCODE, AYIROOPPARA VILLAGE,
THIRUVANANTHAPURAM.

3. BINDHU, D/O.LEELA AMMA,
L.S.BHAVAN, MALAYILKONATHU VEEDU,
POTHENCODE, AYIROOPPARA VILLAGE,
THIRUVANANTHAPURAM.

4. SINDHU, W/O.OMANAKUTTAN,
L.S.BHAVAN, MALAYILKONATHU VEEDU,
POTHENCODE, AYIROOPPARA VILLAGE,
THIRUVNANTHAPURAM.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE REVIEW PETITION FILED BY THE PETITIONER BEFORE THE MUNSIFF'S COURT, THIRUVANANTHAPURAM.

EXT.P2: COPY OF THE COUNTER FILED BY THE RESPONDENTS DATED 26.6.2003 IN I.A.NO.2067/2003.

EXT.P3: COPY OF THE ORDER IN I.A.NO.2067/03 IN O.S.NO.1799/2001 DATED 25.7.2003 OF THE IIND ADDITIONAL MUNSIFF, THIRUVANANTHAPURAM.

TRUE COPY

P.A.TO JUDGE

PIUS C. KURIAKOSE, J.

W.P.(C) No. 5237 OF 2004

Dated this the 25th day of June, 2007

JUDGMENT

In this Writ Petition under Article 227, the plaintiff impugns Ext.P3 order by which the court below dismissed an application for review of its earlier order rejecting the plaint for non-remittance of balance court fee. Even though the application for review was resisted stiffly by the respondents in the court below, there is no appearance for them in this court though all of them have been served with notice.

2. Heard counsel for the petitioner. The order rejecting the plaint for non-remittance of the court fees certainly amounts to a decree and therefore the petitioner-plaintiff could have preferred a regular appeal against that order. But at the same time, remedy by way of review before the same court is also available to him. The ground for review was that the rejection of the plaint was occasioned due to mistake of the lawyer's clerk in noting the posting date of the case. The learned Judge noticed that neither the name of the clerk nor his affidavit was field by the petitioner. The learned Judge also noticed that though information regarding rejection of the plaint was received by the plaintiff on 22.01.03 or immediately thereafter, an application for review has been filed only on 21.02.03. The ground for review did not impress the learned Munsiff.

The grounds urged before the court below for review do not impress me either. At the same time, the learned Munsiff should have seen that the application for review was filed within 30 days of the rejection of the suit. The looser is the plaintiff and not the advocate's clerk or even the advocate concerned, for that matter. The circumstance that the respondents have not come forward before this Court to resist the prayers in this writ petition is also of moment.

Under these circumstances, I set aside the impugned order and allow IA 2067 of 2003 the application for review, subject to the following conditions:

1. The petitioner shall remit the balance court fees within three weeks from today if not already remitted.

2. The petitioner shall also pay a sum of Rs.1,000/- by way of cost to the High Court Legal Services Committee within the aforesaid period and produce receipt before the trial court.

Once the trial court notices that both the above conditions are complied with by the petitioner, the order allowing IA No.2067 of 2003 will become operative and the court below will continue with the suit from the stage at which it was rejected.

PIUS C. KURIAKOSE, JUDGE

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